IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3929 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURJI VARSINGH DODIYAR

Versus

STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:

MS DR KACHHWAH,AMICUS CURIAE for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/06/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985 ") by the order dated 29-1-2000, passed by the Commissioner of Police, Ahmedabad City.

2. The present petitioner-detenu has sent the present petition through jail authority and on receiving the same, office has registered the same as Special Civil Application No.3929 of 2000.

3. Thereafter, the matter came up before this Court for final hearing. On behalf of the State, learned AGP Mr. S.J.Dave is present, whereas Ms. D.R.Kachhwah appears as amicus curiae on behalf the petitioner-detenu.

4. It is now settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 sc 491.

5. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detenu made representation to the authority, but till today the same has not been considered by the authority, and therefore, there is delay on part of the authority to decide the representation made by the detenu. As per the law laid down by this Court, this is a delay which has not been explained by the State. Even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat and ors. reported in 2000 (1) G.L.H. 393 as under :

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever on order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority. "

6. Since no affidavit has been filed either by the detaining authority or the State and the delay has not been sufficiently explained by the State, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

7. The petition is allowed. The impugned order of detention dated 29-1-2000 passed against the detenu is hereby quashed. The detenu Bhuraji Varsing Dodiyar is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute with no order as to costs.

28-6-2000 (R.P.Dholakia, J.)

*mithabhai